IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8906 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONU @ SONU LANGDO LAXMANDAS LANVANI SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. The petitioner - Sonu @ Sonu Langdo Laxmandas Lanvani Sindhi came to be detained by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on June 14, 2000 in exercise of powers conferred under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

2. The grounds of detention served on the petitioner

indicate that the detaining authority has branded the detenu as a 'bootlegger'. For doing this the detaining authority took into consideration one offence registered against detenu and statements of two witnesses whose identity has not been disclosed by the detaining authority in exercise of powers under sec. 9(2) of the PASA Act. The detaining authority recorded a satisfaction that these witnesses suffered from genuine fear from the detenu in respect of their person and property. After considering alternative less drastic remedies, the authority concluded that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti social activities which are detrimental to public order.

3. The order of detention is challenged in this petition under Article 226 of the Constitution of India on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner has drawn attention of this Court to the fact that the statements of two witnesses were recorded on 12/6/2000. They were verified by the detaining authority on 13/6/2000 and the order in question has been passed on 14/6/2000. He submitted that there was no time for the detaining authority to verify the genuineness of the fear expressed by the anonymous witnesses and, therefore, there is erroneous exercise of powers u/S. 9(2) of the PASA Act, which has affected the right of the detenu of making effective representation. In support of his submission he has placed reliance on the decision in the case of Kalidas C. Kahar v/s. State of Gujarat reported in 1993 (2) G.L.R. page 1659.

3.1 In so far as registered offence is concerned, Mr. Prajapati has drawn attention of this Court to the fact that several statements recorded u/S. 161 of the Cr.P.C. were not supplied to the detenu. Therefore, a demand was made by a representation dated 20/7/2000 and the documents have still not been supplied. Therefore, also the petitioner's right of making an effective representation envisaged under Article 22(5) of the Constitution is affected. Another fold of argument of Mr. Prajapati is that these documents were not placed before the detaining authority by the sponsoring authority and, therefore, it has affected the decision making process in the mind of the detaining authority. This would vitiate the order of detention. He, therefore, urged that the petition may be allowed.

4. Mr. Bhatt, Ld. AGP has opposed this petition. He submitted that the representation was considered and

rejected by the Government and a direction was given to the detaining authority to supply the statements demanded in the representation. He is not able to make a definite statement that the statements relied upon and demanded by the detenu have been supplied to him. He urged that the petition may be dismissed.

5. The statements of anonymous witnesses have been verified on 13/6/2000 and the order was passed on 14/6/2000 by the detaining authority. Certain exercise is required to be undertaken by the detaining authority as held by the Division Bench of this Court in Kajalben G. Sindhi v/s. Commissioner of Police reported in (2000) 1 G.L.H. 320 and Bai Amina v/s. State of Gujarat reported in 1981 G.L.R. 1186. No affidavit in reply is filed by the respondents to indicate the undertaking of any such exercise. Further, the authority had no time to undertake such an exercise. In Kalidas C. Kahar (supra) this Court took such a view in similar situation. Therefore, there is erroneous exercise of powers u/S. 9(2) of the PASA Act which has affected the right of the detenu to make effective representation contemplated under Article 22(5) of the Constitution of India and, therefore, the order passed relying on such statements would stand vitiated.

6. So far as the registered offence is concerned, it may be noted that certain statements of witnesses recorded under section 161 of the Cr.P.C. were demanded by making the representation which have been directed by the Government to be supplied to the detenu by the detaining authority. As per the statement made at bar by Mr. Prajapati, such statements are not supplied to the detenu. Mr. Bhatt is not in a position to make a specific statement as to whether documents have been supplied or not. No affidavit in reply has been filed. Under the circumstances, this would be an additional ground to convince this Court to allow the petition.

7. Apart from the supply of the statements, the fact that these statements are not placed before the detaining authority will have an impact of having an effect on the decision making process in the mind of the detaining authority. Statements of witnesses on the part of raiding party would definitely throw some light on the incident and, therefore, they would be very relevant and would from pertinent material so far as decision making process in respect of detention is concerned. They having been not placed before the detaining authority by the sponsoring authority, it can be said to have affected the decision making process. This would vitiate the

order of detention. In this regard decision in the case of A. Sowkath Ali v/s. Union of India reported in (2000) 7 S.C.C. 148 may be favourably referred to, wherein it has been held that all documents which are relevant having bearing on the issue and which may affect the mind of the detaining authority should be placed before it. Non-placement of such documents would affect the subjective satisfaction of the detaining authority and would vitiate the detention order. The present detention order, therefore, is vitiated for the forgoing reasons and cannot be permitted to stand.

9. In the result, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad City, Ahmedabad dated 14/6/2000 qua detenu - petitioner - Sonu @ Sonu Langdo Laxmandas Lanvani Singhi is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]
PVR.